

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Basti Ram & Others Vs. State of Rajasthan
(S.B. CRIMINAL APPEAL NO.135/2006)

S. B. Criminal Appeal under Sec.374 (2) Cr.P.C.
against the judgment dated 15-2-2005 in Sessions Case
No.34/2004 passed by Sh. Vinod Kumar Arya, RHJS,
Additional Sessions Judge, Kishangarh Bas District
Alwar.

Date of Judgment:

May 10, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. Arvind Kumar Gupta] for the appellants.
Mr. Rinesh Gupta]

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT:

This appeal owes its origin in the judgment dated January 27, 2006 of learned Additional Sessions Judge No.2, Kishangarh Bas District Alwar whereby the appellants have been convicted and sentenced as under:-

Vikram & Ajeet Kumar:

U/s.323 IPC:

Both to suffer simple imprisonment for three months.

U/s.324 IPC:

Both to suffer simple imprisonment for one year.

U/s.307/34 IPC:

Both to suffer simple imprisonment for seven years and fine of Rs.5000/-, in default to further suffer imprisonment for one year.

Basti Ram:

U/s.323 IPC:

To suffer simple imprisonment for three months.

U/s.324 IPC:

To suffer simple imprisonment for one year.

U/s.307 IPC:

To suffer simple imprisonment for seven years and fine of Rs.5000/-, in default to further suffer imprisonment for one year.

The substantive sentences were ordered to run concurrently.

2. It is the prosecution case that informant Sube Singh (Pw.8) submitted a written report (Ex.P-7) at Police Station Mundawar on August 16, 2003 at 11.15 AM to the effect that on August 14, 2003 while he along with his family members had gone to meet his relatives and his daughter and nephew were alone in the house, one Mannu Ram scaled the wall of the house in the night but since the inhabitants awoke he fled away. The informant, after coming back to the village, when knew about the incident, he became angry and proceeded to lodge protest along with Ramavtar and Suresh Kumar. Infuriated by this Basti Ram inflicted blow with Kassi on the head and Vikram gave lathi blow on the eye of Ramavtar, when the informant made attempt to intervene Mannu and Vikram gave lathi blows on his hands. On that report case was registered under sections 341 and 323 IPC and investigation commenced. Injuries sustained by injured persons were medically examined and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge No.2 Kishangarh Bas, District Alwar. Charges under sections 323, 341 and 307/34 IPC were framed. The appellants denied the charges and claimed trial. The prosecution in support of its case examined

as many as 12 witnesses and 11 documents. In the explanation under Sec.313 CrPC, the appellants claimed innocence. One witness was examined in defence. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. I have heard Mr.A.K. Gupta, learned counsel for the appellants and Mr. M.L.Goyal, learned Public Prosecutor and weighed the material on record.

4. Although the matter has come up for decision on application seeking suspension of sentence of appellant Basti Ram, but in view of the directions of Hon'ble Apex Court in Special Leave to Appeal 4141/2006 dated October 19, 2006, I proceed to decide the appeal itself finally.

5. A look at the record demonstrates that Ramavtar (Pw.11) vide injury report (Ex.P-1) sustained one incised wound on occipital region. Sube Singh sustained two bruises on right forearm and Suresh Kumar received lacerated wound on left parietal region.

6. The prosecution case is founded on the testimony of Saroj (Pw.2), Mohan Lal (Pw.3), Suresh (Pw.4), Reena (Pw.6), Sube Singh (Pw.8) and Ramavtar (Pw.11). Conjoint reading of the statements of these witnesses reveals that the appellants were also given beating by Ramavtar, Suresh and Sube Singh. Saroj (Pw.2) in her cross examination deposed as under:-

यह सही है कि नरेन्द्र द्वारा सुबह मन्नु के मकान में घुसने की बात बताने पर मेरे पति रामोतार को एकदम से गुस्सा आ गया था।... यह सही है कि रामोतार, सुरेश व सूबे सिंह ने मुलजिमान के साथ मारपीट की थी।

Ramavtar (Pw.11) in his deposition admitted that he had gone to the shop of Mannu to raise protest:-

मैं करीब साढ़े सात बजे उलाहना देने के लिए मन्नू की दुकान पर जो मेरे घर के बगल में है पर गया था।

7. It also appears that admitted that cross case was registered against the complainant party. Radha Ballabh Sharma, IO (Pw.7) in his cross examination he stated as under:-

यह सही है कि मुलजिमान व मजरूबान मे आपस में झगडा हुआ था, जिसमे मजरूबान के खिलाफ मुलजिमान ने भी रिपोर्ट दर्ज कराई थी, जिसका नतीजा मैंने मुण्डावर न्यायालय में मजरूबान के खिलाफ पेश किया था।

Suresh (Pw.4) also admitted in his cross examination that cross case was pending against him:-

मुलजिमान के साथ मारपीट का मुकदमा मेरे खिलाफ मुण्डावर में चल रहा है।

8. A look at FIR No.204/2003 dated August 16, 2003 (Ex.D-5) goes to show that on the report of Jagram case under sections 341 and 323 was registered against Ramavtar, Suresh and Sube Singh at Police Station Mundawar. As per injury report (Ex.D-8) of Vikram, he sustained two injuries and one was swelling on right parietal occipital region.

9. Factual situation emerges from the material on record may be summarized thus:-

(i) It was complainant Ramavtar who went to the shop of Vikram to make protest.

(ii) Thereafter altercations ensued and there was free fight

between the parties.

(iii) Vikram and Ajeet Kumar, members of accused party, sustained injuries.

(iv) Out of two injuries of Vikram one was on his right parietal occipital region.

10. Section 308 IPC is 'per verba et literis', the same as section 307 IPC, with the only difference that it relates to an attempt to commit culpable homicide whereas section 307 relates to an attempt to commit murder. Punishment under section 308 IPC as provided is consequently also less. In other respects the constituting element of the two sections are the same. The points requiring proof under section 308 IPC are:-

(1) That the accused did an act.

(2) That he did with -

(A) the intention of -

(a) causing such bodily injury as is likely to cause death,
or

(b) causing death on -

(i) grave and sudden provocation not courted, or

(ii) in the exercise of the right of private defence which was, however, exceeded, or

(iii) believing in the lawful discharge of his public duty; or

(iv) by consent of the deceased; or

(B) the knowledge-

(a) that the act was likely to cause death.

To which may be added the following aggravating circumstance:

(3) That the act caused hurt to the person upon whom the attempt was made.

Illustration appended to section 308 IPC is as under:-

A, on grave and sudden provocation, fires a pistol at Z, under such circumstances, that if he thereby caused death he would be guilty of culpable homicide not amounting to murder. A has

committed the offence defined in this section.

11. Having scanned the material on record, I found that no offence under section 307 is made out against appellants since Ramavtar was aggressor and he provoked appellant Basti Ram by inflicting one injury on his head. Appellant Basti Ram cannot be convicted under section 307 IPC since he made attempt to commit culpable homicide and his act comes under section 308 IPC.

12. In view of the peculiar facts and circumstances of the case it cannot be inferred that appellants Vikram and Ajeet Kumar shared common intention to inflict injury on the person of Ramavtar. Possibility of over implication of Vikram and Ajeet Kumar cannot be ruled out.

13. For these reasons, I dispose of instant appeal in the following terms:-

(i) Appeal of appellants Vikram and Ajeet Kumar stands allowed and they stand acquitted of the charges under sections 323, 324 and 307/34 IPC. These appellants are on bail, they need not surrender and their bail bonds stand discharged.

(ii) I partly allow the appeal of appellant Basti Ram and instead of section 307 I convict him under section 308 IPC. Looking to the fact that the appellant has already undergone confinement for a period more than one year the ends of justice would be met in sentencing him to the period already undergone by him in confinement. I however acquit him of the charges under sections

323 and 324 IPC. The appellant Basti Ram, who is in jail, shall be set at liberty forthwith, if he is not required to be detained in any other case.

(iii) The impugned judgment of learned trial court stands modified as indicated above.

(Shiv Kumar Sharma)J.

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